

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

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CLEAR US DISTRICT COURT  
NORFOLK, VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 2:06-cv-624

SEA BAY DEVELOPMENT CORP.;  
BEECH TREE PARK, INC.; GREEN SEA  
FARMS, LLC; ELWOOD H. PERRY;  
FRANK T. WILLIAMS' FARMS, INC.;  
and FERRELL'S BACKHOE SERVICE,  
INC.,

Defendants.

CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed the Complaint herein against Defendants Sea Bay Development Corp.; Beech Tree Park, Inc.; Green Sea Farms LLC; Elwood H. Perry, Jr.; Frank T. Williams' Farms, Inc.; and Ferrell's Backhoe Service, Inc., alleging that Defendants violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States at a 1,560-acre property known as the Bosher Site or Green Sea Farm, located west of Johnstown Road, east of Shillelagh Road, and south of the Whispering Pines subdivision, in Chesapeake, Virginia, ("the Site") and more fully described in

COPY

the Complaint, without authorization by the United States Army Corps of Engineers (“the Corps”);

WHEREAS, the Complaint seeks (1) to permanently enjoin Defendants from discharging or causing the discharge of dredged material, fill material, sediment, and any other pollutants into any waters of the United States except in compliance with the CWA; (2) to require Defendants, at their own expense and at the direction of EPA and/or the Corps, to effect complete restoration of waters of the United States, including wetlands, on the site and/or to conduct off-site mitigation for irreversible environmental damage; and (3) to require Defendants to pay civil penalties for each day of each violation of the CWA, as provided in 33 U.S.C. § 1319(d);

WHEREAS, Williams Farms disputes the allegations in the Complaint and is willing to enter into this Consent Decree solely to avoid further litigation;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States’ claims under the CWA against Defendant Frank T. Williams’ Farms, Inc. (“Williams’ Farms”) regarding the Site;

WHEREAS, the United States and Williams’ Farms agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States’ claims under the CWA against Williams’ Farms in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States’ claims against Williams’ Farms in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Eastern District of Virginia pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because Williams' Farms conducts business in this District, the subject property is located in this District, and the causes of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

II. APPLICABILITY

4. The obligations, terms, and conditions of this Consent Decree shall apply to and be binding upon Williams' Farms, its officers, directors, agents, employees and servants, and its successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with Williams' Farms whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against Williams' Farms, Williams' Farms shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or

participation with Williams' Farms, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the Site shall not alter or relieve Williams' Farms of its obligation to comply with all of the terms of this Consent Decree.

### III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against Williams' Farms under CWA Section 301 concerning the Site.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All obligations in this Consent Decree or resulting from this Consent Decree shall have the objective of causing Williams' Farms to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Williams' Farms and Williams' Farms' agents, successors and assigns are enjoined from discharging any pollutant into any waters of the United States at the site, unless such discharge complies with the provisions of the CWA and its implementing regulations.

9. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the United States Army Corps of Engineers to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

10. This Consent Decree in no way affects or relieves Williams' Farms of its responsibility to comply with any applicable federal, state, or local law, regulation or permit.

11. This Consent Decree in no way affects the rights of the United States as against any person or entity not a party to this Consent Decree.

12. The United States reserves any and all legal and equitable remedies available: to enforce the provisions of this Consent Decree; and to enforce applicable law, except for claims resolved by this Consent Decree as set forth in Paragraph 6 above.

13. Nothing in this Consent Decree shall constitute an admission of fact or law by any party.

#### IV. CIVIL PENALTIES

14. Williams' Farms shall pay a civil penalty to the United States in the amount of Thirty-Five Thousand Dollars (\$35,000.00). The payment shall be made by Williams' Farms in two installments. The first installment of Seventeen Thousand And Five-Hundred Dollars (\$17,500.00) shall be made not later than 90 days after entry of this Consent Decree. The second installment of Seventeen Thousand And Five-Hundred Dollars (\$17,500.00) shall be made not later than 270 days after entry of this Consent Decree. Early payment of one or both installments is permitted.

15. Williams' Farms shall make the payments set forth in Paragraph 14 above, by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2006V01299, EPA Region III and the DOJ case number (DJ#90-5-1-1-05061). Payment shall be made in accordance with instructions provided to Williams' Farms by the

Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Virginia. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

16. Upon each installment payment of the civil penalty required by this Consent Decree, Williams' Farms shall provide written notice, to all of the addresses specified in Section VII of this Consent Decree, that such payment was made in accordance with Paragraph 15.

17. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section VI) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

#### V. DISPUTE RESOLUTION

18. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and Williams' Farms, to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond twenty (20) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and Williams' Farms cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within ten (10) days after the end of the informal negotiations period, Williams' Farms files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have twenty (20) days to respond to the motion and propose an alternate resolution. In resolving any such

dispute, Williams' Farms shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that Williams' Farms' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

19. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the twenty (20) day period for informal negotiations. Williams' Farms shall have ten (10) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Williams' Farms shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that Williams' Farms' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

20. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Williams' Farms under this Consent Decree, except as provided in Paragraph 23 below regarding payment of stipulated penalties.

#### VI. STIPULATED PENALTIES

21. After entry of this Consent Decree, if Williams' Farms fails to timely fulfill any requirement of the Consent Decree, then Williams' Farms shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- |    |   |                    |
|----|---|--------------------|
| A. | For Day 1 up to and including<br>Day 30 of non-compliance | \$1000.00 per day  |
| B. | For Day 31 up to and including<br>60 of non-compliance    | \$2,000.00 per day |

C. For Day 61 and beyond \$3,000.00 per day  
of non-compliance

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

22. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section V shall be resolved upon motion to this Court as provided in Paragraphs 18 and 19.

23. The filing of a motion requesting that the Court resolve a dispute shall stay Williams' Farms obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Williams' Farms does not prevail on the disputed issue, stipulated penalties shall be paid by Williams' Farms as provided in this Section.

24. To the extent Williams' Farms prevails on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

25. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

26. Williams' Farms shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in



accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2006V01299, EPA Region III and the DOJ case number (DJ#90-5-1-1-05061). Payment shall be made in accordance with instructions provided to Williams' Farms by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Virginia. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Williams' Farms shall provide written notice, at the addresses specified in Section VII of this Consent Decree.

## VII. ADDRESSES

27. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO EPA:

- (1) Pamela Lazos  
Senior Assistant Regional Counsel  
United States Environmental Protection Agency  
Region III  
1650 Arch St., Mail Code 3RC20  
Philadelphia, PA 19103-2029
- (2) Jeffrey Lapp  
United States Environmental Protection Agency  
Region III  
1650 Arch St., Mail Code 3EA31  
Philadelphia, PA 19103-2029
- (3) April Bowie, Docket Clerk  
United States Environmental Protection Agency  
Region III  
1650 Arch St., Mail Code 3RC00  
Philadelphia, PA 19103-2029

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Kenneth C. Amaditz, Trial Attorney  
Cynthia J. Morris, Trial Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

C. TO WILLIAMS' FARMS:

- (1) Frank T. Williams, President  
Frank T. Williams' Farms, Inc.  
P.O. Box 7100  
5021 Morris Neck Road  
Virginia Beach, VA 23457
- (2) Mark R. Baumgartner, Esq.  
Pender & Coward  
222 Central Park Ave.  
Virginia Beach, VA 23462-3026  
*Counsel for Defendant Frank T. Williams' Farms, Inc.*

VIII. COSTS OF SUIT

28. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Williams' Farms subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Williams' Farms shall be liable for any costs or attorneys' fees incurred by the United States in any action against Williams' Farms for noncompliance with or enforcement of this Consent Decree.

IX. PUBLIC COMMENT

29. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received

disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Williams' Farms agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified Williams' Farms in writing that it no longer supports entry of the Consent Decree.

#### X. CONTINUING JURISDICTION OF THE COURT

30. This Court shall retain jurisdiction over this action in order to *enforce or modify* the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

#### XI. MODIFICATION

31. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and Williams' Farms and approved by the Court.

#### XII. TERMINATION

33. This Consent Decree may be terminated by either of the following:

- A. Williams' Farms and the United States may at any time make a joint motion to the Court *for termination of this Decree or any portion of it*; or
- B. Williams' Farms may make a unilateral motion to the Court to terminate this Decree after each of the following has occurred:

1. Williams' Farms has paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

2. Williams' Farms has certified compliance pursuant to subparagraph 1 above to the Court and all parties; and

3. Within forty-five (45) days of receiving such certification from Williams' Farms, the United States has not contested in writing that such compliance has been achieved. If the United States disputes Williams' Farms full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

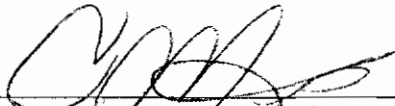
IT IS SO ORDERED.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
United States District Judge

ON BEHALF OF THE UNITED STATES:

RONALD J. TENPAS  
Acting Assistant Attorney General  
Environment and Natural Resources Division



Kenneth C. Amaditz, Trial Attorney  
Cynthia J. Morris, Trial Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(202) 514-3698 (Amaditz)  
(202) 616-7554 (Morris)

Dated: 10/21/02



MARK POLLINS  
Director, Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Dated: 10/17/02

DONALD S. WELSH  
Regional Administrator  
U.S. Environmental Protection Agency, Region III

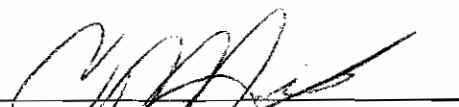
Dated: \_\_\_\_\_

WILLIAM C. EARLY  
Regional Counsel  
U.S. Environmental Protection Agency, Region III

Dated: \_\_\_\_\_

ON BEHALF OF THE UNITED STATES:

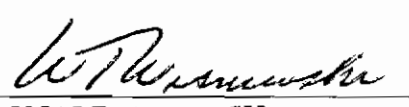
RONALD J. TENPAS  
Acting Assistant Attorney General  
Environment and Natural Resources Division

  
Kenneth C. Amaditz, Trial Attorney  
Cynthia J. Morris, Trial Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
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(202) 616-7554 (Morris)

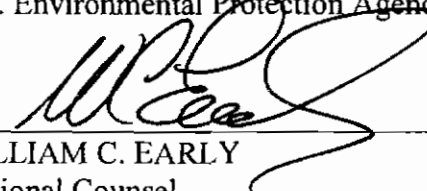
Dated: 10/25/07

MARK POLLINS  
Director, Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Dated: \_\_\_\_\_

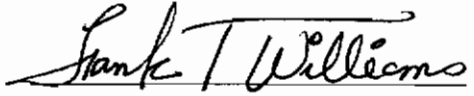
  
DONALD S. WELSH  
Regional Administrator  
U.S. Environmental Protection Agency, Region III

Dated: 10/18/07

  
WILLIAM C. EARLY  
Regional Counsel  
U.S. Environmental Protection Agency, Region III

Dated: 10/17/07

FOR DEFENDANT FRANK T. WILLIAMS' FARMS, INC.

A handwritten signature in cursive script that reads "Frank T. Williams". The signature is written in black ink and is positioned above the printed name and address.

FRANK T. WILLIAMS, President  
Frank T. Williams' Farms, Inc.  
P.O. Box 7100  
5021 Morris Neck Road  
Virginia Beach, VA 23457

Dated: 10/4/07